that the consignor is primarily liable for payment of freight on every shipment and it is submitted that the only right he can confer on the carrier by way of a general lien is a right to retain goods in just such a case as this for the payment of an unpaid balance owing from him, the consignor, but not from the consignee.

There is, indeed, a *dictum* from Michigan, by no less an authority than Judge Cooley, to the effect that the consignor, in making a contract of carriage with the carrier, has a presumed authority to act as agent for and to bind the consignee.[15] That was said in his judgment in an action which arose out of the destruction by fire of goods in warehouse at the *terminus* of transit. The company, being sued by the consignee, sought to deny liability by virtue of a clause in the contract with the shipper exempting the carrier from such liability. But it is important to note that all the goods had been paid for by the consignee before their delivery to the carrier for transit. Where the vendor-consignor has been paid and has parted with all interest in the goods before he delivers them to the carrier, it may be considered that he acts as agent for the new owner in shipping the goods. But even there it may be doubted if such a presumed authority would be held to extend so far as to cover the creation of a general lien against the principal, in view of the settled hostility of the law to general liens.

We must wait for a case in which a carrier seeks to enforce against the consignee a general lien which has been thus "created" by a contract with a third party, to have it judicially considered whether or not such a contract is of any avail even against the consignee. But in the meantime, it is a matter of fact on which the testimony of the English business world would be of interest whether the view of shippers as to the meaning of this disputed clause agrees with that of Mr. Justice Pickford or with that of the Court of Appeal—whether it is understood by them to bind their own rights or those of consignees.

S. R.

CONFLICT OF LAWS—TORTS—"LORD CAMPBELL'S ACT"—Where a cause of action, which arose in a foreign jurisdiction, is sought to be enforced elsewhere, the law of the place where the cause of action arose, the *lex loci delicti,* will determine the substantive rights of the parties, while the *lex fori* will govern questions of remedy, such as statute of limitations.[1] But where a new right of action, unknown to the common law, has been created by statute and the statute which gives the right at the same time provides the remedy for violation of that right, those matters ordinarily pertaining to the remedy become

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[15] McMillan *et al.* v. R. R. Co., 16 Mich. 79 (1867), at page 119.

[1] Johnson v. R. R., 50 Fed. Rep. 886 (1892); Carson v. Smith, 133 Mo. 606 (1895).

limitations to the substantive right and hence are determined by the *lex loci delicti,* which governs all matters of substantive right.[2] The most important right of this nature, unknown to the common law, but created by statute, is the action for wrongful death authorized by Lord Campbell's Act[3] in England and by various adaptations of that act in practically every State in the Union.[4]

The enforceability of rights gained under such a statute in a jurisdiction other than the one in which the right was gained and the cause of action created has never been doubted.[5] There are many *dicta* to the effect that the *forum* must have a statute similar to the one under which the cause of action arose,[6] but it is not necessary that the statutes be identical.[7] It has been contended that the necessity for similarity is not intended to introduce a new element into the enforcement of action in tort committed elsewhere, but that similarity of statutes shows that enforcement of the foreign statute is not contrary to the settled public policy of the *forum* and that such similarity makes it possible for the courts of the *forum* to have proper machinery to enforce such a right.[8] From this willingness on the part of the courts of a particular *forum* to give effect to foreign statutes, dissimilar in a greater or less degrees to statutes of the *forum* on the same subject, inevitably resulted problems of conflicts of the laws of the several jurisdictions.

In an action for wrongful death, no cause of action can accrue to anyone except those given that right by the statute of the place where occurred the wrongful act causing death; hence no question arises as to whether the ultimate beneficiaries under the statute of the *forum* can maintain an action, if they are not given such right by the foreign statute. The question which does arise is whether, the party entitled to sue being a nominal party, trustee for the real beneficiaries, who are the same in both jurisdictions, such party shall be the one entitled by the *lex fori* or the *lex loci delicti.* It has never been denied and has often been asserted that action by the person

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[2] The Harrisburg, 119 U. S. 199 (1886); Bond v. Penna. R. R. 124 Minn. 195 (1914).

[3] 9 & 10 Vict., c. 93 (1846).

[4] In Penna. Acts April 15, 1851, P. L. 674, and April 26, 1855, P. L. 309.

[5] Knight v. West Jersey R. R., 108 Pa. 250 (1885); Anderson v. Louisville Ry. Co., 210 Fed. Rep. 689 (1914). But see Ash v. R. R., 72 Md. 144 (1890).

[6] Wooden v. R. R., 126 N. Y. 10 (1891); Slater v. Mexican R. R. Co., 194 U. S. 120 (1904).

[7] Dennick v. R. R., 103 U. S. 11 (1891); Higgins v. C. N. E. R. R., 155 Mass. 176 (1892).

[8] Wooden v. R. R., *supra,* note 6; Higgins v. C. N. E. R. R., *supra,* note 7, "If foreign law penal, or offends our own policy, or repugnant to justice or good morals, or calculated to injure this state or its citizens, or if no jurisdiction of parties who must be brought in to give a satisfactory remedy, or if under our forms of procedure an action here cannot give a substantial remedy, courts are at liberty to decline jurisdiction."

named in the foreign statute is proper[9] and, strong *dicta* say, necessary.[10] These *dicta* had been accepted as final until the case of *Stewart* v. *Baltimore & Ohio Railroad*[11] decided that, the real beneficiaries being the same, the nominal plaintiff might be the one named in the statute of the *forum,* because, since these statutes merely removed a common law obstacle to recovery for a recognized tort, and did not create a new cause of action, matters of remedy were still to be determined by the *lex fori.* The value of that case must be greatly lessened unless its results can be justified on other grounds, for there is a decided weight of opinion that these statutes create a new right of action, altogether unknown to the common law.[12] Before and since the Stewart case, it has been generally held that where right of action is given by both statutes to the administrator, the administrator appointed in the *forum* is a proper party to bring action,[13] but these cases went rather to the powers of an administrator over choses in action of the deceased which arose in a foreign jurisdiction, than to the question as to proper parties plaintiff to an action for wrongful death. The proper limits within which procedure of the *forum* may be invoked in enforcing statutes for wrongful death seem to have been set in *Teti* v. *Consolidated Coal Company,*[14] which contains an interpretation of *Stewart* v. *Baltimore & Ohio Railroad Company*[15] which, if adopted by the court that decided that case, will relieve the Stewart case of its most objectionable features. The Teti case divides this class of actions into two subdivisions, those where the right to maintain the action is given directly to

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[9] Wooden v. R. R., *supra,* note 6; Strait v. Yazoo & M. V. R. R., 209 Fed. Rep. 157 (1913).

[10] Usher v. R. R., 126 Pa. 206 (1889); Lower v. Segal, 59 N. J. L. 66 (1896).

[11] 168 U. S. 445 (1897). Action was here brought in the District of Columbia by the administrator there appointed of the deceased, who was killed in Maryland, by whose statute action must be brought in the name of the state to the use of the same persons beneficially entitled under the District of Columbia statute, which makes the administrator the proper party plaintiff. Directly *contra* to this case on almost identical facts, see Stone v. Groton Bridge Co., 77 Hun, 99 (N. Y. 1890).

[12] Ash v. B. & O. R. R., 72 Md. 144 (1890); Ohneavage v. Chicago City Ry. Co., 259 Ill. 424 (1913); *In re* Brennan's Account, 160 App. Div. 401 (N. Y. 1914); Centofanti v. Penna. R. R., 244 Pa. 255 (1914).

[13] Bruce v. R. R., 83 Ky. 174 (1885); Higgins v. R. R., *supra,* note 7.

[14] 217 Fed. Rep. 443 (1914). Action brought in New York by administrators there appointed for death in Pennsylvania of Teti and Dastoli, the former having left a widow and children, the latter a father and mother. By the Pennsylvania acts, the widow must bring action for herself and children, but parents of deceased sue in their own right. *Held:* The administrator of Teti is a proper party plaintiff, for by the New York statute, administrator recovers also as trustee for widow and children. But the administrator of Dastoli has no right of action, that being vested in the parents of Dastoli.

[15] *Supra,* note 11.

the one entitled in his or her own right to the recovery when had, and those where the party entitled to and does so in a representative capacity. The Stewart case is held to apply to the second class only, and, while it is admitted that there may be technical objections to applying the *lex fori* in such a case, the infinitely greater convenience in allowing the trustee entitled under the *lex fori* to proceed is grounds for disregarding the rule of private international law in that one narrow case. For the Stewart case to apply, then, the beneficiaries under both statutes must be the same, and under both, they must seek redress through a trustee of some sort. No one can possibly be prejudiced, except perhaps the logicians.

J. F. H.

LIQUOR LAWS OF PENNSYLVANIA—RETAIL LICENSE—NECESSITY—In the administration of the Brooks High License Law, which now regulates the sale of intoxicating liquors in Pennsylvania, no subject seems to have been more productive of difference of opinion and practice than the interpretation of the powers and duties conferred upon the Courts of Quarter Sessions of the various counties in the granting or refusing of licenses. The pivotal point of difference seems to lie in the question of "necessity", as involved in the regulatory statute. The statute provides that "the said Court of Quarter Sessions shall hear petitions . . . in favor of and remonstrances against the application for such license, and in all cases shall refuse the same whenever, in the opinion of the said court, having due regard to the number and character of the petitioners for and against such application, such license is not necessary for the accommodation of the public and entertainment of strangers and travelers".[1] It is clear that the act places the determination of the question of necessity within the discretion of the Court of Quarter Sessions and the appellate courts of the State have so held. In the recent case of *Gohn's License*[2] the order of the Court of Quarter Sessions refusing a license on the ground of lack of necessity was sustained, even though no remonstrances were filed against the application.

The leading case dealing with the question of necessity is that of *Schlaudecker* v. *Marshall*.[3] It is true that that case involved the interpretation of an earlier act than the one now in force; but the question of necessity was not changed by the later statute now controlling, so the decision of the court in the case mentioned is still applicable.[4] The Supreme Court, speaking through Mr. Justice Agnew, said:

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[1] Act of May 13, 1887, P. L. 108, §7.

[2] 57 Pa. Super. Ct. 160 (1914).

[3] 72 Pa. 200 (1872).

[4] *Cf.* Act of March 22, 1867, P. L. 40, §1.